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ORIGINAL

No. 84-1013

Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

VERNAL BOUGH, THOMAS LLOYD, and EARL HOWARD,

Petitioners,

-vs-

PATRICK RAMIREZ,

Respondent,

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

BRIEF IN OPPOSITION TO

PETITION FOR A WRIT OF CERTIORARI

PATRICK RAMIREZ, pro se
DOC#24767 WCC P.O. Box 473
Westville, Indiana 46391-0473

Respondent

QUESTION PRESENTED FOR REVIEW

Whether the United States Court of Appeals for the Seventh Circuit correctly reversed the district court's *sua sponte* dismissal of Patrick Ramirez's *pro se* civil rights complaint, when it cannot be said beyond doubt that Ramirez can prove no set of facts in support of his claim which would entitled him to relief?

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IN THE

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VERNAL BOUGH, THOMAS LLOYD, and EARL HOWARD, Petitioner, -vs- PATRICK RAMIREZ, Respondent,	On Appeal From The United States Court Of Appeals For The Seventh Circuit

BRIEF IN OPPOSITION TO

PETITION FOR A WRIT OF CERTIORARI

Respondent Patrick Ramirez respectfully requests that the Court deny the issuance of a Writ of Ceritorari directed to the United States Court of Appeals for the Seventh Circuit and, thereby, refuse to review the decision of that court in Cause Number 83-2702.

OPINION BELOW

The Seventh Circuit Court of Appeals entered an opinion in this Cause on August 22, 1984. The opinion is set forth in the Petitioners' Apendix A and is unreported. The Petitioners then timely filed a petition for rehearing and sugrestion for rehearing in banc, and that petition was denied by the Court of Appeals in this cause on September 21, 1984.

STATEMENT OF THE CASE:

This case is before the Court on a Petition for A writ of Certiorari filed by Defendants Vernal Bourn, Thomas Lloyd, and Earl Howard (hereinafter referred to as "Petitioners".) These Petitioners request the Court to review a judgment and order entered by the Seventh Circuit Court of Appeals, which reversed and remanded the district court's sua sponte

dismissal of Plaintiff Patrick Ramirez's (hereinafter referred to as the "Respondent") complaint. The judgment sought to be reviewed is fully set forth in Petitioners' Appendix A.[1/]

Pursuant to 42 U.S.C. §1983, Respondent filed his pro se complaint in the United States District Court for the Southern District of Indiana, alleging that Petitioners had denied him due process and rights secured for him by Article V(d) of the Interstate Agreement on Detainers (hereinafter referred to as the "IAD"), 18 U.S.C.App. [2/] The Respondent alleged that Fred G. Osborne, the prosecuting attorney for Howard County, Indiana, prepared and lodged a detainer against Respondent with the warden of the Southern Michigan Prison, where Respondent was then incarcerated. Prosecutor Osborne sought the return of Respondent to Indiana on the detainer to face felony charges on two counts

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1/ References to appendicies in this brief are all directed to the Petitioners' Appendicies.

2/ Respondent also sued Marjorie Barker, IAD Administrator for the State of Indiana, but the complaint was dismissed before Barker filed an answer. Barker did not enter an appearance on appeal to the Seventh Circuit, nor has she joined in the present proceeding. She is, however, still a party to this action in the district court below and she has filed an answer of general denial since remand of this case by the Seventh Circuit.

of dealing in marijuana, under Howard County Superior Court Cause Number 470. A request under Article IV of the IAD was also sent to the Michigan State Prison for temporary custody of Respondent.

On July 21, 1981, Petitioners Bough and Lloyd, as officers of the Howard County Sheriff's Department, transported Respondent from Michigan to Howard County, Indiana. The return was based on the detainer for two counts of dealing in marijuana, under Cause Number 470. Respondent had waived his right to a pretransfer hearing to challenge the return to Howard County on these particular charges only.

On July 23, 1981, Respondent appeared in the Howard Superior Court. The purpose of this hearing was suppose to be for the sole reason of entering pleas of guilty to the two counts of dealing in marijuana under Cause Number 470. Notwithstanding, at this court appearance, Respondent was notified for the first time that the State of Indiana also intended to prosecute him for three additional felonies under Howard County Superior Court Cause Number 424. These additional charges were wholly unrelated to the criminal charges under Cause Number 470; they were not mentioned in the detainer and they did not arise out of the same transaction as did the charges named in the detainer.

Respondent informed the state court judge that no detainer had been lodged against him with Michigan authorities seeking

his return for the three criminal charges under Cause Number 424. Respondent also informed the state court judge that he would have contested the transfer had he known that the State of Indiana intended to also prosecute him for the charges under Cause Number 424.

Upon gaining knowledge of Indiana's intent to prosecute him for the crimes in Cause Number 424, Respondent immediately notified Petitioners Bough and Lloyd (the officers who actually transferred Respondent from Michigan to Howard County) and Petitioner Howard (the officer who gave orders to Bough and Lloyd to effectuate the transfer) that a violation of Article V(d) of the IAD was about to occur in this case. Respondent explained to these three petitioners that the State of Indiana was about to illegally prosecute him for crimes that did not form the basis of the detainer, or arise out of the same transaction as did the crimes listed in the detainer, and begged them to take any type of action to remedy or correct the imminent violation. Albeit that each of these petitioners, as officers and employees of a political subdivision of the State of Indiana were under a legal duty pursuant to Article 9 of the IAD to enforce the terms of the agreement, the Petitioners stood idly and did not offer the slightest bit of assistance to Respondent.

Consequently, on May 17, 1982, Respondent was adjudged guilty of the three criminal charges in Cause Number 424 and on

June 28, 1982, he was sentenced to five years in prison on each count, with the sentences ordered to be served consecutively to the sentences imposed under Cause Number 470.

Respondent alleged in his complaint that the Petitioners were negligent in their duties to enforce the provisions of the IAD by failing and refusing to rectify the alleged violation once it was brought to their attention and that as a result Respondent had suffered deprivation of rights, privileges, and immunities guaranteed to him by the IAD; that he had been fraudulently tricked and deceived into waiving his right to a pretransfer hearing; and, that the Petitioners acted under color of state law. Petitioners' Appendix D. Respondent sought both damages and declaratory relief.

On July 28, 1983, Petitioners filed their answers to Respondent's complaint. On August 19, 1983, the district court, sua sponte, dismissed the complaint for failure to state a claim upon which the relief sought could be granted. The district court held that Petitioners could not be held responsible for the alleged violations of the IAD, reasoning that the decision to prosecute Respondent on charges not listed in or related to the detainer was a decision made by the Howard County Prosecuting Attorney and overseen by the state court judge, both of whom were not named in the complaint as defendants because they were absolutely immune from civil suit for their action. Petitioners' Appendix B.

Respondent appealed the sua sponte dismissal to the Seventh Circuit Court of Appeals. On August 22, 1984, the district court's judgment was reversed. In reversing the Court of Appeals used a two-pronged analytical approach of disposing with the issue raised on appeal. First, the Seventh Circuit determined that Respondent's complaint pleaded an arguable violation of Article V(D) of the IAD, 18 U.S.C.App. Secondly, after reviewing the pleadings in a light most favorable to Respondent, the Court of Appeals determined that it could not be said beyond doubt that Petitioners would not have had a duty to prevent or remedy the violation. As a result, the Seventh Circuit sounily believed the district court had prematurely dismissed this case, reversed the sua sponte dismissal, and remanded for further proceedings so an adequate record could be developed in order that important issues could be formulated to determine whether it could be said as a matter of law that the complaint fails to state a claim.

SUMMARY OF THE ARGUMENT:

The prevailing law is that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that a plaintiff can prove no set of facts in support of his claim which would entitle him to relief.

The complaint in this case was filed pursuant to 42 U.S.C. §1983. In order to state a claim under this statute, the complaint must show two things. First, that Respondent has suffered the deprivation of a federally protected right, privilege or immunity. Second, that such deprivation was caused by a person acting under color of state law. The complaint in this case meets these requirements.

The Seventh Circuit Court of Appeals correctly reversed the district court's sua sponte dismissal of this case. This is true because the record herein has not yet been sufficiently developed to make competent and intelligent judgments concerning vital issues, which must yet be determined, before it can be said that as a matter of law the complaint fails to state a claim on which the relief sought can be granted.

ARGUMENT

In Conley v. Gibson, 355 U.S. 41, 45-46 (1957), this Court stated that ". . .a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. . ." In Haines v. Kerner, 404 U.S. 519, 520-521 (1972), the Court reaffirmed this basic principle of law and further held that allegations in a pro se complaint must be held to a less stringent standard than those pleadings drafted by learned counsel in considering whether to

dismiss a complaint for failure to state a claim.

In the present case, Respondent filed his pro se complaint pursuant to 42 U.S.C. §1983, which provides as follows:

> Every person who, under color of any statute, ordinance, regulation, custom or usage of any state or territory or the District of Columbia, subjects, or causes to be subjected, any citizens of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

This Court has held that in order for a complainant to establish a claim under 42 U.S.C. §1983, he must do only two things. First, the plaintiff must have sufferred the deprivation of a federally protected right, privilege or immunity. Second, the deprivation must have been caused by a person acting under color of state law. Parratt v. Taylor, 451 U.S. 527 (1981).

Here, Respondent alleges in his complaint that the Petitioners defied him due process and rights secured by him under Article V(d) of the IAD, 18 U.S.C.App. More particularly Respondent alleges that Petitioners were under a duty to enforce the provisions of the IAD, and failed to do so in this case, resulting in Respondent being prosecuted for criminal charges outside of the terms of the IAD. The complaint alleges that

this particular duty is imposed upon Petitioners by virtue of Article IX of the IAD, which provides:

> All courts, departments, agencies, officers and employees of this state (Indiana) and its political subdivisions are hereby directed to enforce the agreement on detainers and to cooperate with one another and with other party states in enforcing the agreement and effectuating its purposes.

Petitioners' Appendix E.

In reversing the district court's sua sponte dismissal in this case, the Seventh Circuit felt that Respondent's complaint stated an arguable violation of his rights under Article V(d) of the IAD, which provides in pertinent part that:

> (d) The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. . .

Petitioners' Appendix E.

Viewing the facts of this case in a light most favorable to Respondent, it is clear that the complaint does state an arguable violation of Article V(d) of the IAD since Respondent was prosecuted for criminal charges (after having been returned from Michigan to Indiana pursuant to Article IV of the IAD) which did not form the basis of the detainer or arise out of the same transaction. Hence, since this Court has

previously held that construction of the IAD presents a question of federal law, Culyer v. Adams, 449 U.S. 433 (1981), and that such type of a compact involves federal rights, Petty v. Tennessee-Missouri Bridge Commission, 359 U.S. 275 (1959), the complaint does state facts from which it can be easily inferred that Respondent has sufferred the deprivation of federally protected rights, privileges, or immunities. Parratt v. Taylor, supra.

The Seventh Circuit was unable to say beyond doubt that Respondent could not prove any set of facts in support of his claim that Petitioners were the "persons" who caused him to suffer the claimed deprivations. Conley v. Gibson, supra. This was because the record in this case has not yet been developed enough to make a competent and intelligent judgment concerning this vital matter.

The district court dismissed this case before all named defendants filed an answer and before vital discovery could be conducted. 3/ Recognizing that there may be a point where dismissal for failure to state a claim is appropriate, the Court of Appeals reasoned that that point had not yet been

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3/ Since the Seventh Circuit's reversal, Defendant Barker has filed her answer by generally denying all allegations in the Complaint. Furthermore, Respondent has served interrogatories on each of the defendants, which have not yet been answered, and the district court has entered a Pre-Trial Scheduling Order.

reached in this case, on this record, because "several issues have yet to be determined before it can be said that, as a matter of law, the complaintfails to state a claim on which the relief sought can be granted." Petitioners' Appendix A.

In their Petition for A Writ of Certiorari, Petitioners pay extravagant lip service to the fact that it was the state prosecutor who made the decision to prosecute Respondent outside of the provisions of the IAD, and that it was the state court judge who oversaw the illegal prosecution, knowing very well that both of these individuals are shielded from civil prosecution by virtue of absolute immunity. Stump v. Sparkman, 435 U.S. 349 (1978) and Imbler v. Pachtman, 424 U.S. 409 (1976). Notwithstanding, the Petitioners ask this Court (on the basis of an inadequately developed record) to hold that the state court judge and prosecutor are alone responsible for the injustices suffered by Respondent.

The Seventh Circuit Court of Appeals has already rejected such an invitation on direct appeal in this case. That court was not pursuaded that none of the Petitioners would have a duty to take action to prevent or remedy the IAD violation once it was brought to their attention. Petitioners' Appendix A. The record in this case is simply to underdeveloped to make such a judgment.

In summation, the Seventh Circuit Court of Appeals correctly reversed the sua sponte dismissal of Respondent's complaint.

Unier the particular facts of this case, it cannot be said beyond doubt that Respondent-Plaintiff Patrick Ramirez can prove no set of facts in support of his claim which would entitle him to the relief sought.

CONCLUSION:

For the foregoing reasons, Respondent Patrick Ramirez respectfully requests that the Petitioners' Petition for A Writ of Certiorari be denied.

Respectfully submitted,

Patrick Ramirez
Respondent-Plaintiff pro se
DOC#24767 O-Bldg.
Westville Correctional Center
P.O. Box 473
Westville, Indiana 46391-0473

Dated this 1st day of March, 1985.

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